



Report to the Auburn City Council

Action Item

Agenda Item No. 5

City Manager Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works *BS*
Megan Siren, Administrative Analyst *MS*
Date: June 25, 2012
Subject: WWTP Groundwater Monitoring – Professional Service Agreement BSK Associates

The Issue

Shall the City approve a contract with BSK Associates for one year for groundwater monitoring at the Wastewater Treatment Plant?

Conclusions and Recommendation

Staff recommends that City Council by **RESOLUTION** authorize the Director of Public Works to execute a contract with BSK Associates to perform groundwater monitoring at the Wastewater Treatment Plant.

Background

The City's National Pollutant Discharge Elimination System (NPDES) permit for the Wastewater Treatment Plant issued by the Central Valley Regional Water Resources Control Board (Regional Board) in September 2010 continues to require quarterly groundwater monitoring at the Wastewater Treatment Plant per the City's waste discharge permit. The September 2010 Permit required periodic (quarterly and semi-annually for certain constituents) monitoring of groundwater both above (up-gradient) and below (down-gradient) of the WWTP. The additional sampling increased sampling costs by about \$28,000 per year.

Specifically, the permit adopted in 2010 required sampling for the presence of dozens of pollutants (for constituents like metals, pesticides, solvents) in the groundwater that have expensive laboratory costs. After collecting years of data indicating "non-detect" for these pollutants, the City petitioned the Regional Board for a reduced sampling program for these pollutants (generally called "Title 22 Constituents"). In May 2012, the City received a letter from the Regional Board that allowed these modifications to the groundwater monitoring.

The minor modifications have been reflected in BSK Associates' proposal to the City. The revised sampling program will reduce the annual costs by about \$16,000.

BSK Associates has successfully performed the groundwater monitoring to date and City staff feels they are qualified and familiar with the WWTP to continue these service.

Alternatives Available to Council; Implications of Alternatives

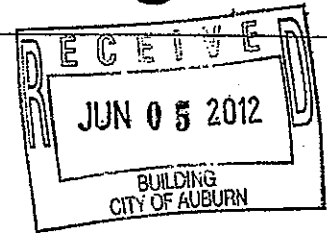
1. Authorize the consultant agreement.
2. Take no action.

Fiscal Impact

The 2012/2013 Budget included funding for the groundwater monitoring in the Sewer Budget. The proposal from BSK Associates totals \$30,736 for one year of groundwater monitoring.

*Attachments: Letter from Regional Board dated May 29, 2012
Professional Service Agreement – BSK Associates
Resolution*

Central Valley Regional Water Quality Control Board



29 May 2012

Bernie Schroeder, Director of Public Works
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

CERTIFIED MAIL NO.
7010 1670 0002 0652 5167

MINOR MODIFICATIONS, CITY OF AUBURN WASTEWATER TREATMENT PLANT, WASTE DISCHARGE REQUIREMENTS R5-2010-0090-01 (NPDES NO. CA0077712); PLACER COUNTY

In a letter dated 27 September 2011, the City of Auburn reported to Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff, several typographical errors in Waste Discharge Requirements Order (WDR) R5-2010-0090-01 (NPDES Permit) for the City of Auburn Wastewater Treatment Plant.

Pursuant to Code of Federal Regulations, 40 CFR section 122.63(a), minor modification of an NPDES permit is allowed to correct typographical errors. The following minor modifications, shown in underline/strikeout format, are made to WDR Order R5-2010-0090-01, Attachment E, section VIII.B, to correctly identify and clarify the required monitoring.

1. The Discharger shall monitor groundwater at Monitoring Locations GW-001 through GW-0025 as follows:

Table E-7. Receiving WaterGroundwater Monitoring Requirements

Parameter	Units	Sample Type	Minimum Sampling Frequency	Required Analytical Test Method
Depth to Groundwater	Feet	Measured ¹	2/Year	—
Groundwater elevation	Feet	Calculated ¹	2/Year	—
pH	standard units	Grab	2/Year	2
Chemical Oxygen Demand	mg/L	Grab	2/Year	2
Total Coliform Organisms	MPN/100 mL	Grab	2/Year	2
Fecal Coliform Organisms	MPN/100 mL	Grab	2/Year ³	2
Fecal Streptococcus	MPN/100 mL	Grab	2/Year ³	2
Escherichia Coliform	MPN/100 mL	Grab	2/Year ³	2
Total Organic Carbon	MPN/100 mL	Grab	2/Year	2
Ammonia and Ammonium Ion as NH ₄	mg/L	Grab	2/Year	2
Nitrate (as N)	mg/L	Grab	2/Year	2
Total Kjeldahl Nitrogen (as N)	mg/L	Grab	2/Year	2

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BOEE, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

Parameter	Units	Sample Type	Minimum Sampling Frequency	Required Analytical Test Method
Total Nitrogen	mg/L	Calculated	2/Year	²
Electrical Conductivity @ 25°C	µmhos/cm	Grab	2/Year	²
Total Dissolved Solids	mg/L	Grab	2/Year	²
Sodium Adsorption Ratio	—	Calculated	2/Year	²
Phosphorus, Total	mg/L	Grab	2/Year	²
General Minerals ⁴	mg/L	Grab	2/Year	²
Metals ⁵	µg/L	Grab	1/Quarter	²
Title 22 Constituents ⁶	varies	Grab	2/Year	²

¹ The depth to groundwater and groundwater elevation shall be sampled in the 2nd and 4th quarter of the year, and shall be used to calculate the direction and gradient of groundwater flow. Elevations shall be measured to the nearest one-hundredth of a foot from mean sea level. The groundwater elevation and depth to groundwater shall be measured prior to purging the wells.

² Pollutants shall be analyzed using the analytical methods described in 40 CFR Part 136.

³ Sampling of total coliform organisms serves as a trigger for the sampling of fecal coliform organisms, fecal streptococcus, and Escherichia coliform. Sampling for these three constituents shall be performed for at least two consecutive semi-annual samples in any groundwater monitoring well following the detection in that well of total coliform organisms in excess of 2.2 MPN/100 mL.

⁴ General Minerals shall include the following: boron, bromide, calcium, fluoride, iron, magnesium, potassium, sodium, chloride, phosphorus, sulfate, total alkalinity (including alkalinity series), and total hardness as CaCO₃, and include verification that the analysis is complete (i.e., cation/anion balance).

⁵ Metals shall include at least the following: antimony, arsenic, barium, beryllium, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, vanadium, and zinc.

⁶ Title 22 Constituents shall include the following: bis (2-ethylhexyl) phthalate, tertiary butyl alcohol (TBA), 1,2,3-trichlorobenzene, 1,2,4-trichlorobenzene, and hexachlorobutadiene

The corrected Order may be downloaded from the Central Valley Water Board's internet website at http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/.

In its 27 September 2011 letter, the City also requested a reduction in the number of monitoring wells and/or the number of groundwater constituents that are sampled. The requested permit change does not qualify as a minor permit modification; a Central Valley Water Board action would be necessary. The City must formally request a permit amendment and submit supporting technical information for such a request.

If you have any questions regarding this minor modification, please contact Elizabeth Thayer at (916) 464-4671 or ethayer@waterboards.ca.gov.



Pamela C. Creedon
Executive Officer

cc: Dave Smith, U.S. Environmental Protection Agency, Region IX, San Francisco
US Army Corp of Engineers, Sacramento
US Fish and Wildlife Service, Sacramento
Phil Isorena, State Water Resources Control Board, Sacramento (w/enclosures)
Department of Water Resources, Central District, Sacramento

State Office of Historical Preservation, Sacramento
Office of Drinking Water, Department of Public Health, Sacramento
Department of Public Health, Environmental Management Branch, Sacramento
Regional Manager, Department of Fish & Game, Region II, Rancho Cordova
Bill Jennings, California Sportfishing Protection Alliance, Stockton
Richard Swensen, Placer County Health Department, Auburn
Placer Group Sierra Club, Auburn
California Trout, San Francisco
Friends of Placer County Health Department, Auburn
Randy Bailey, Lincoln
Robert J. Baiocchi, California Sportfishing Protection Alliance, Quincy
Lee Barrett, Auburn
Lloyd Bracewell, Bracewell Engineering, Oakland
Susan Brandt-Hawley, Brandt-Hawley & Zoia, Glen Ellen
Michael Brown, Ophir Area Property Owners Association, Newcastle
Newcastle/Ophir Municipal Advisory Committee, Newcastle
Dick and Carol Dal Pino, Newcastle
Roger Phelps, Sacramento Bee Neighbors, Auburn
David and Gail Mackenroth, Newcastle
Ronald and Patricia Otto, Auburn
Ramona Swenson, American Fisheries Society, El Cerrito
Richard and Barbara Van Riper, Newcastle
U.S. Army Corps of Engineers, Sacramento
Jerry Boles, Department of Water Resources, Sacramento
Todd Wilson, Dept. of General Services, Office of Project Development & Management,
Sacramento
Ed Jenkins, Placer County Building Department, Auburn
Placer County Planning Department, Auburn
Wayne White, Building Official, City of Auburn, Auburn
Placer County Resource Conservation District, Auburn
Mitch Green, Daily Pacific Builder, San Francisco
Lowell M. Jarvis, Newcastle
Dave Honeycutt, Aqua Terra Environmental, Auburn
Michael E. Reese, Auburn
Cheryl L. Smith, Auburn

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn /BSK Associates.)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and **BSK Associates, a California, Corporation** ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: **Groundwater Monitoring and Reporting for Fiscal Year 2012/13 for the City of Auburn Wastewater Treatment Plant.**
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's June 19, 2012 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's June 19, 2012 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": July 1, 2012.
- 3.4 "Expiration Date": June 30, 2013.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 18 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \$30,736.00 unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code Section 1090, and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Jeff Yeazell** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.6 Consultant has represented to the City that key personnel will perform and coordinate the services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.7 Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this

Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.

- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

8. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

9. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits,

and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

10. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

11. INDEMNIFICATION

- 11.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 11.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage as is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and fees of litigation.
- 11.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 11 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 11.4 The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 11.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 11.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

12. INSURANCE

- 12.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 12.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 12.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 12.1.3 Worker's Compensation insurance as required by the laws of the State of California.

- 12.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 12.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 12.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 12.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 12.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 12.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 12.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 12.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 12.10 Any deductibles or self-insured retentions must be declared to and approved by

the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.

12.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 11 of this Agreement.

12.2 Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under the Agreement.

13. MUTUAL COOPERATION

13.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

13.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

14. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

15. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

16. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x144
Facsimile: (530) 823-4216

If to Consultant:

BSK Associates
3140 Gold Camp Dr, Ste 160
Rancho Cordova, CA 95670
Telephone: (916) 853-9293
Facsimile: (916) 853-9297

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11364 Pleasant Valley Road
Penn Valley, CA 95946
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

17. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 10, Section 11, Paragraph 13.2 and Section 14 of this Agreement shall survive the expiration or termination of this Agreement.

18. TERMINATION

18.1 City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

18.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

19. GENERAL PROVISIONS

- 19.1 Consultant warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 19.2 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.3 This Agreement shall be binding on the successors and assigns of the parties.
- 19.4 Except as expressly stated herein, there is no intended third party beneficiary of any right or obligation assumed by the parties.
- 19.5 Time is of the essence for each and every provision of this Agreement.
- 19.6 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 19.7 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 19.8 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term,

covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver.

- 19.9 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.10 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.11 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 19.12 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.13 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
BSK Associates

By: _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Date: _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Attest:

By: _____
Deputy City Clerk

Date: _____

Approved as to form:

By: _____
Michael G. Colantuono, City Attorney

Date: _____

EXHIBIT A

SCOPE OF WORK

BSK Proposal ES12-7188

Groundwater Monitoring and Reporting Services
July 1, 2012, Through June 30, 2013, Monitoring Period
City of Auburn Wastewater Treatment Plant
10441 Ophir Road, Auburn, California

SCOPE OF SERVICES

Task 1: Quarterly Groundwater Monitoring

For each quarter in the monitoring period (four quarters total), BSK will perform the following scope of services:

The BSK project manager will schedule the field activities each quarter to ensure enough time is allowed for groundwater samples to be collected and analyzed in accordance with the Waste Discharge Requirements (WDR) order. BSK will coordinate the proposed schedule with the Wastewater Treatment Plant Manager.

Once on site, the BSK sampling technician will check in with the Wastewater Treatment Plant Manager or designee. The following tasks will be performed by the technician:

- Each well will be opened and allowed to equilibrate to atmospheric pressure for approximately 30 minutes.
- Depth to groundwater in each monitoring well will be measured using a water level indicator and logged on a field form.
- Prior to sampling, the monitoring wells will be purged of at least three casing volumes. The purge water will be discharged to the land surface in a location and manner that will not allow it to enter the well.
- The appropriate sample bottles will be labeled, filled, and stored in an ice chest. The samples will be logged on a chain-of-custody and transported to BSK's laboratory.

All non-disposable field equipment will be washed with a non-phosphate detergent solution and thoroughly rinsed with distilled water before and after each well is sampled. The samples will be collected using single-use disposable bailers and analyzed for the list of constituents described in Task 2, below.

Task 2: Laboratory Analyses

Groundwater samples collected from the five monitoring wells will be sent to BSK's state-certified laboratory under chain-of-custody control protocols. Groundwater samples collected in the first and third quarters of each year will be analyzed for the following constituents:

- Metals: Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, Vanadium, and Zinc.

BSK
Associates
Engineering Laboratories

Groundwater samples collected in the second and fourth quarters will be analyzed for the following constituents:

- pH
- Electrical Conductivity
- Chemical Oxygen Demand (COD)
- Total Coliform
- Fecal Coliform
- Escherichia Coliform
- Fecal Streptococcus
- Ammonia (NH3) and Ammonia Ion (NH4)
- Total Organic Carbon (TOC)
- Total Nitrogen IC (Nitrate, Nitrite, Total Kjeldahl Nitrogen)
- Total Dissolved Solids
- Sodium Absorption Ratio (SAR)
- Total Phosphorus
- Mass Balance(Alkalinity, Calcium, Fluoride, Magnesium, Potassium, Sodium, Chloride, Sulfate)
- Boron
- Bromide
- Hardness
- Additional Metals (Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Copper, Iron, Lead, Mercury, Molybdenum, Nickel, Selenium, Vanadium, Zinc)
- Volatile Organic Compounds (VOCs) by EPA524 (1,2,3-trichlorobenzene, 1,2,4-trichlorobenzene, hexachlorobutadiene, TBA)
- Semi-volatile VOCs (SVOCs) by EPA 525 (bis (2-ethylhexyl) phthalate)

Task 3: Quarterly Report Preparation

Upon completion of field work and laboratory analysis for each quarter, BSK will prepare a quarterly groundwater monitoring report in accordance with the Regional Water Quality Control Boards Standard Provisions and Reporting Requirements for Waste Discharge Requirements. Each report will include a description of activities conducted during that quarter, the condition of the wells, depth to groundwater, groundwater gradient and flow direction, laboratory analytical result summary tables, graphical representations of the site and groundwater elevation contours, along with conclusions and recommendations. The fourth quarter report will recap the groundwater monitoring activities undertaken during the year and include an assessment of any trends observed with regards to groundwater gradient and groundwater quality. The reports will be prepared under the direction of, and signed and stamped by, a Professional Engineer or Geologist licensed in California.

Task 4: Project Management/Meetings

BSK has budgeted time to accommodate for periodic meetings with the City and/or Water Board staff to provide status updates, to ensure the objectives expected by the Water Board are met, and to act as the City's advocate regarding groundwater monitoring and analysis aspects of the General Order.

PROJECT SCHEDULE

BSK will commence with our services upon written authorization to proceed. Analytical laboratory tests will be scheduled on a standard (two-week) turnaround basis. We anticipate that the field work will be completed during the second month of each quarter and the report will be provided to the City by the 21st day of the month following each quarter. One hardcopy and one electronic report each will be provided to the City and the Plant Manager.

FEES

BSK will perform the Scope of Work in accordance with the Estimate of Fees indicated on Pages 4 and 5. Any additional work items outside of the Scope of Services described in this proposal will be performed at additional cost in accordance with the unit rates indicated in the Estimate of Fees. We will not exceed the estimated fee for additional services without prior notification and approval by the City.

LIMITATIONS

This proposal has been prepared using the information currently included in the current WDR. Any changes in the requirements stated in the WDR for groundwater monitoring will be communicated directly to the City of Auburn. If changes to the WDR (e.g., additional sampling locations or analyses) require additional services beyond those stated in this proposal, then an addendum to this contract will be prepared by BSK and submitted to the City for approval before any additional services are undertaken.

EXHIBIT B

FEE SCHEDULE

Groundwater Monitoring and Reporting Services
July 1, 2012, through June 30, 2013, Monitoring Period
City of Auburn Wastewater Treatment Plant

BSK Proposal ES12-7188
June 19, 2012
Page 4

Estimate of Fees

Task 1: Groundwater Monitoring Field Activities

Project Professional	1 hrs. @ \$145/hr.	145.
Staff Professional.....	2 hrs. @ \$115/hr.	230.
Senior Technician.....	12 hrs. @ \$85/hr.	1,020.
Sampling Vehicle and Equipment.....	1 day @ \$350/day.....	350.
Subtotal, Task 1 (Per Event):		1,745.

Total, Task 1 (4 Events): \$6,980.

Task 2: Laboratory Analyses

Task 2a: First and Third Quarter Sampling Events

Metals	5 samples @ \$215/sample.....	1,075.
(Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, Vanadium, Zinc)		

Subtotal, Task 2a (Per Event): 1,150.

Total, Task 2a (2 Events): \$2,150.

Task 2b: Second and Fourth Quarter Sampling Events

pH.....	5 samples @ \$10/sample.....	50.
Electrical Conductivity.....	5 samples @ \$12/sample.....	60.
Chemical Oxygen Demand (COD).....	5 samples @ \$40/sample.....	200.
Total Coliform.....	5 samples @ \$30/sample.....	150.
Fecal Coliform.....	5 samples @ \$5/sample.....	25.
Escherichia Coliform.....	5 samples @ \$5/sample.....	25.
Fecal Streptococcus.....	5 samples @ \$100/sample.....	500.
Ammonia (NH ₃) and Ammonia Ion (NH ₄).....	5 samples @ \$40/sample.....	200.
Total Organic Carbon (TOC).....	5 samples @ \$40/sample.....	200.
Total Nitrogen IC.....	5 samples @ \$60/sample.....	300.
(Nitrate, Nitrite, Total Kjeldahl Nitrogen)		
Total Dissolved Solids	5 samples @ \$15/sample.....	75.
Sodium Absorption Ratio (SAR)	5 samples @ \$60/sample.....	300.
Total Phosphorus	5 samples @ \$40/sample.....	200.
Mass Balance	5 samples @ \$75/sample.....	375.
(Alkalinity, Calcium, Fluoride, Magnesium, Potassium, Sodium, Chloride, Sulfate).		
Boron.....	5 samples @ \$30/sample.....	75.
Bromide.....	5 samples @ \$75/sample.....	150.
Hardness	5 samples @ \$34/sample.....	170.
Additional Metals	5 samples @ \$230/sample.....	1,150.
(Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Copper, Iron, Lead, Mercury, Molybdenum, Nickel, Selenium, Vanadium, Zinc)		

BSK
Associates
Engineering/Laboratories

VOCs (EPA 524)5 samples @ \$150/sample..... 750.
(1,2,3-trichlorobenzene, 1,2,4-trichlorobenzene, hexachlorobutadiene, TBA)
SVOCs (EPA 525)5 samples @ \$175/sample..... 875.
(bis (2-ethylhexyl) phthalate)

Subtotal Task 2b (Per Event): \$5,830.

Total, Task 2b (2 Events): \$11,660.

Total, Task 2: \$13,810.

Task 3: Quarterly Monitoring Report Preparation

Senior Professional..... 1 hr. @ \$160/hr..... 160.
Project Professional 6 hrs. @ \$145/hr. 870.
Staff Professional..... 8 hrs. @ \$115/hr. 920.
Clerical 1 hr. @ \$60/hr..... 60.

Subtotal Task 3 (Per Event): 2,010.

Total, Task 3 (4 Events): \$8,040.

Task 4: Project Management/Meetings

Senior Professional..... 6 hrs. @ \$160/hr. 166.
Project Professional 12 hrs. @ \$145/hr..... 1,740.

Total, Task 4: \$1,906.

Total Project Estimate: \$30,736.

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RESOLUTION NO. 12-
RESOLUTION AUTHORIZING THE CONSULTANT AGREEMENT WITH BSK
ASSOCIATES FOR GROUNDWATER MONITORING AT WASTEWATER
TREATMENT PLANT

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the
Director of Public Works to execute a consultant contract with BSK Associates
to perform groundwater monitoring at the Wastewater Treatment Plant.

A true and correct copy of said Consultant Agreement is attached hereto as
Exhibit "A."

DATED: June 25, 2012

Kevin Hanley, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
that the foregoing resolution was duly passed at a regular session meeting of
the City Council of the City of Auburn held on the 25th day of June 2012 by the
following vote on roll call:

Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk